

1  
2  
3  
4  
5  
6  
7  
8 NOT FOR CITATION

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SAMUEL W. LEWIS, ) No. C 08-02191 JF (PR)  
12 Petitioner, ) ORDER TO SHOW CAUSE  
13 vs. )  
14 B. CURRY, Warden, )  
15 Respondent. )  
16 \_\_\_\_\_

17  
18 Petitioner, a state prisoner proceeding pro se, seeks a petition for a writ of habeas  
19 corpus pursuant to 28 U.S.C. § 2254, challenging the decision of the Board of Parole  
20 Hearings (“BPH”) finding him unsuitable for parole. Petitioner has paid the filing fee.  
21 The Court orders Respondent to show cause why the petition should not be granted.

22  
23 STATEMENT

24 According to the petition, on November 21, 1988, Petitioner was sentenced to a  
25 term of fifteen-years-to-life in state prison upon his guilty plea to second degree murder  
26 in the County of Los Angeles Superior Court. Petitioner challenges the BPH’s decision  
27 denying him parole after his fourth parole suitability hearing on October 12, 2007.  
28 Petitioner filed habeas petitions in the state superior court, state appellate court, and the

1 state supreme court, all of which were denied as of March 19, 2008. Petitioner filed the  
 2 instant federal petition on April 28, 2008.

3

4 **DISCUSSION**

5 **A. Standard of Review**

6 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
 7 in custody pursuant to the judgment of a state court only on the ground that he is in  
 8 custody in violation of the Constitution or laws or treaties of the United States.” 28  
 9 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

10 A district court shall “award the writ or issue an order directing the respondent to  
 11 show cause why the writ should not be granted, unless it appears from the application that  
 12 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

13 **B. Petitioner’s Claims**

14 As grounds for federal habeas relief, Petitioner alleges that “the [BPH]’s denial of  
 15 parole suitability violated the ‘some evidence’ standard and Petitioner’s constitutional  
 16 right to due process under the 5th and 14th Amendments.” (Pet. 12.) Petitioner also  
 17 claims that the BPH’s use of “multiple victims” evidence in support of their decision  
 18 violates the terms of his plea agreement. (Pet. 10.) Liberally construed, Petitioner’s  
 19 claims are cognizable under § 2254. The Court orders Respondent to show cause why the  
 20 petition should not be granted.

21

22 **CONCLUSION**

23 1. The Clerk shall serve by mail a copy of this order and the petition  
 24 and all attachments thereto upon the Respondent and the Respondent’s attorney, the  
 25 Attorney General of the State of California. The Clerk shall also serve a copy of this  
 26 order on the Petitioner.

27 2. Respondent shall file with the Court and serve on Petitioner, **within sixty**  
 28 **(60) days** of the date this order is filed, an answer conforming in all respects to Rule 5 of

1 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus  
2 should not be granted. Respondent shall file with the answer and serve on Petitioner a  
3 copy of all portions of the state parole record that have been transcribed previously and  
4 that are relevant to a determination of the issues presented by the petition.

5 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
6 with the Court and serving it on Respondent **within thirty (30) days** of his receipt of the  
7 answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of  
9 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
10 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
11 with the Court and serve on Respondent an opposition or statement of non-opposition  
12 **within thirty (30) days** of receipt of the motion, and Respondent shall file with the court  
13 and serve on Petitioner a reply **within fifteen (15) days** of receipt of any opposition.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
15 that all communications with the Court must be served on respondent by mailing a true  
16 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
17 parties informed of any change of address by filing a separate paper captioned "Notice of  
18 Change of Address." He must comply with the Court's orders in a timely fashion.  
19 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
20 to Federal Rule of Civil Procedure 41(b).

21 IT IS SO ORDERED.

22 DATED: 7/23/08



23 JEREMY FOGEL  
24 United States District Judge